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U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

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FILE: [redacted] Office: NEW YORK, NEW YORK Date: JAN 10 2005

IN RE: Applicant: [redacted]

APPLICATION: Application for Certificate of Citizenship under Section 321 of the former Immigration and Nationality Act, 8 U.S.C. § 1432.

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Interim District Director, New York, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born out-of-wedlock on April 16, 1974, in Honduras. The applicant's father, [redacted] was born in Honduras, and he is not a U.S. citizen. The applicant's natural mother, [redacted] was also born in Honduras and is not a U.S. citizen. The record reflects that the applicant's father married a U.S. citizen [redacted] Ms. [redacted] on May 6, 1975. The applicant was admitted into the United States pursuant to a lawful admission, as Ms [redacted] stepson on August 28, 1985. The applicant presently seeks a certificate of U.S. citizenship pursuant to section 321 of the former Immigration and Nationality Act (the former Act), 8 U.S.C. § 1432.

The interim district director found that the applicant had failed to establish that he was at any time legally adopted by his U.S. citizen stepmother, or that he otherwise qualified for U.S. citizenship under section 321 of the former Act. The application was denied accordingly.

On appeal, the applicant asserts that Ms. [redacted] legally adopted him in Honduras prior to his immigration to the United States, and that he is entitled to U.S. citizenship.

Section 321 of the former Act states in pertinent part that:

> (a) A child born outside of the United States of alien parents . . . becomes a citizen of the United States upon fulfillment of the following conditions:
>
> (1) The naturalization of both parents; or
>
> (2) The naturalization of the surviving parent if one of the parents is deceased; or
>
> (3) The naturalization of the parent having legal custody of the child when there has been a legal separation of the parents or the naturalization of the mother if the child was born out of wedlock and the paternity of the child has not been established by legitimation; and if
>
> (4) Such naturalization takes place while such child is under the age of eighteen years; and
>
> (5) Such child is residing in the United States pursuant to a lawful admission for permanent residence at the time of the naturalization of the parent last naturalized under clause (1) of this subsection, or the parent naturalized under clause (2) or (3) of this subsection, or thereafter begins to reside permanently in the United States while under the age of eighteen years.

Section 101(c) of the Act states that:

> (c) As used in title III-
>
> (1) The term "child" means an unmarried person under twenty-one years of age and includes a child . . . adopted in the United States, if such . . . adoption takes place

> before the child reaches the age of 16 years (except to the extent that the child is described in subparagraph (E)(ii) or (F)(ii) of subsection (b)(1)), and the child is in the legal custody of the . . . adopting parent or parents at the time of such . . . adoption.

In support of the assertion that he was adopted by Ms. [redacted] the applicant submits a copy of a notarized Authorization, signed by his natural mother in February 1985, stating that she authorized the applicant to travel to the United States for U.S. immigration purposes and that she authorized Ms. [redacted] exercise paternal rights over the applicant. The AAO finds that the notarized Authorization submitted by the applicant does not constitute evidence of an adoption. The AAO notes that the record contains no other evidence to indicate that Ms. [redacted] adopted the applicant. To the contrary, the 1985, "Application for Immigrant Visa and Alien Registration" form and the "Petition to Classify Status of Alien Relative for Issuance of Immigrant Visa" form submitted on behalf of the applicant, and contained in the record, identify the applicant Ms. [redacted] as the applicant's stepmother. Accordingly, the AAO finds that the applicant has failed to establish he was legally adopted by Ms [redacted] or that he was Ms [redacted] child" as defined in section 101(c) of the Act.[1]

The AAO finds that the applicant has failed to establish that he satisfies the requirements set forth in subsections (a)(1) and (a)(2) of section 321 of the former Act. The applicant has also failed to satisfy any of the requirements set forth in section 321(a)(3) of the former Act.

There is no evidence in the record to establish that the applicant's natural father and mother ever married or became legally separated, and the record fails to establish that the applicant's father became a naturalized U.S. citizen prior to the applicant's twenty-first birthday. Moreover, the AAO finds that the applicant was legitimated by his father. The AAO notes that in 1957, the Honduran Constitution eliminated all legal distinctions between children born in and out of wedlock, such that the acknowledgement of paternity of a child is considered an act of legitimation in Honduras. *See Matter of Sanchez,* 16 I&N Dec. 671 (BIA 1979). The record reflects that the applicant's birth certificate lists his father's name. The record additionally contains documentation signed by the applicant's father in February 1985, evidencing his acknowledgment of paternity over the applicant.

Based on the above findings, the AAO finds that the applicant has failed to establish that he qualifies for citizenship under section 321 of the former Act. Because the applicant has failed to establish that he is the child of a U.S. citizen, it is unnecessary to discuss his eligibility under derivative citizenship provisions contained in the Immigration and Nationality Act.

8 C.F.R. 341.2(c) states that the burden of proof shall be on the claimant to establish citizenship by a preponderance of the evidence. *See also* § 341 of the Act, as amended, 8 U.S.C. § 1452. The applicant failed to establish that he meets the requirements for citizenship as set forth in section 321 of the former Act and his appeal will be dismissed.

ORDER: The appeal is dismissed.

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[1] The AAO notes that although a stepchild qualifies as a "child" under section 101(b)(1)(B) of the Act, 8 U.S.C. § 1101(b)(1)(B), for nonimmigrant and immigrant visa Title I and Title II of the Act purposes, a stepchild is not included in the definition of a "child" for section 101(c)(1) of the Act, Title III naturalization and citizenship purposes. Rather, under section 101(c) of the Act, a U.S. citizen parent cannot obtain citizenship for a stepchild unless the parent legally adopts the child and presents, amongst other things, proof of such adoption prior to the child's 16th birthday